

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 14

HOUSING AND COMMUNITY DEVELOPMENT CORPORATION
OF HAWAII

CHAPTER 192

EVICTIION AND BAR TO PARTICIPATION PROCEDURE FOR
HOMELESS FACILITIES

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SUBCHAPTER 1

GENERAL PROVISIONS

§15-192-1 Purpose. These rules shall govern the procedures for the following actions in homeless facilities that are owned or operated by the housing and community development corporation of Hawaii or that are operated by a facility operator receiving a homeless shelter stipends pursuant to section 201G-464:

- (1) Terminating the residency of a homeless family or individual occupying any unit in a homeless facility; or
 - (2) Barring a homeless family or individual from participating further in a homeless facility.
- [Eff **OCT 25 1999**] (Auth: HRS §201G-452(b)) (Imp: HRS §201G-452)

§15-192-2 Definitions. As used in this chapter: "Corporation" means the housing and community development corporation of Hawaii.

"Dependent" means a member of a household, other than the head or spouse, who is related by blood or adoption and including foster children and hanai children, who is under nineteen years of age; disabled; or physically-challenged.

"Facility operator" means an organization managing or operating a homeless facility pursuant to the stipend program and may include the corporation or a provider agency.

"Family" means:

- (1) Two or more persons who live or intend to live together as a unit, one of whom is a

dependent, under nineteen years of age, and related by blood, marriage, or operation of law, including foster children and hanai children; or

- (2) A person who is pregnant or in the process of securing legal custody of a minor child or children.

"Government record" means information maintained by an agency in written, auditory, visual, electronic, or other physical form as defined in section 92F-3, HRS.

"Hanai child" means a person, under nineteen years of age, for whom an applicant provides food, nourishment, and support and who is known among friends, relatives, and the community as the applicant's child.

"Hearings officer" means any person, or panel of persons, duly appointed and authorized by the facility operator to hold a hearing for the purpose of taking evidence or oral argument and making a decision in any matter concerning participants before the facility operator.

"House rules" means rules which provide for the internal management of a homeless facility and which participants are required to follow.

"Notice of cause" means a notice by the facility operator to evict a participant, or to bar a homeless family or individual from further participation in a homeless facility.

"Participant" means a family or individual that is determined eligible for and receives shelter or services in any program for the homeless pursuant to chapter 15-188.

"Party" means the facility operator, if named, permitted, or entitled as of right to participate in a proceeding; a provider agency; a participant; each person named in a proceeding; or any person, permitted or entitled as of right to participate in a proceeding before the hearings officer, in the capacity of a petitioner, claimant, respondent, intervenor, or in a capacity other than that of a witness.

"Person" means an individual, partnership, corporation, association through a representative, or public or private organization of any character.

"Proceeding" refers to any matter brought before the hearings officer to evict a participant or to bar a participant from further participation in a homeless

facility.

"Respondent" means the party who contests or controverts a proceeding.

"Social services agreement" means the agreement signed between a facility operator and a participant which outlines specific terms and conditions the participant must satisfy in order to continue participation in the program. [Eff **OCT 25 1999**]
(Auth: HRS §201G-452(b)) (Imp: HRS §201G-452)

§15-192-3 Service of process. (a) A notice of cause issued for the purpose of this chapter shall be served as follows:

- (1) By personal service by a person authorized by the facility operator:
 - (A) Upon a person other than a dependent or an incompetent person in the following manner:
 - (i) By delivering the notice personally or, in the case the party cannot be found, by leaving copies at the party's dwelling unit or usual place of abode with some person of suitable age and discretion then residing therein; or
 - (ii) By delivering the notice to an agent authorized by appointment or by law to receive service;
 - (B) Upon a dependent, by delivering the notice personally to the guardian of the dependent's property, or if there is no guardian or if service cannot be made upon the guardian, then as provided by order of the hearings officer; and also to the dependent if the dependent is older than fifteen years of age; or
 - (C) Upon an incompetent person, by delivering the notice personally to the guardian of the person's property, or if service cannot be made upon the guardian, then as provided by order of the hearings officer; and also to the incompetent person, unless the hearings officer otherwise orders; or
- (2) By mailing the notice to any party at the party's last known address by certified or

- registered mail, return receipt requested.
- (3) If any person cannot be served with process, and the facts shall appear by affidavit affirming that personal service or mail have not been successful or otherwise to the satisfaction of the hearings officer, service as to the person pursuant to order of the hearings officer shall include leaving a copy of the notice affixed in a conspicuous place upon the person's dwelling unit.
- (b) Every document subsequent to the original notice of cause shall be served on the parties as follows:
- (1) When service is required to be made upon a party represented by an attorney, the service shall be made upon the attorney; and
 - (2) Service upon an attorney or upon a party shall be made by a person authorized by the facility operator by delivering a copy or by mailing it by first class mail, postage prepaid, to the attorney's last known address. [Eff **OCT 25 1999**] (Auth: HRS \$201G-452(b)) (Imp: HRS \$201G-452)

\$15-192-4 Time. In computing any period of time prescribed or ordered by these rules, the day of the act, event, or default from which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a legal holiday. [Eff **OCT 25 1999**] (Auth: HRS \$201G-452(b)) (Imp: HRS \$ 201G-452)

- \$15-192-5 Hearings officer.** The hearings officer:
- (1) Shall not be an operating staff member of a homeless facility;
 - (2) May be an executive officer or board member of a facility operator or a designated representative of the facility operator; and
 - (c) Shall be a person other than the person (or a subordinate of that person) who made or approved the issuance of a notice of cause.

[Eff **OCT 25 1999**] (Auth: HRS §201G-452(b)) (Imp: HRS §201G-452)

SUBCHAPTER 2

COMMENCEMENT OF ACTION

§15-192-11 Notice of cause. (a) Any proceeding initiated by a facility operator to evict a participant from a dwelling unit in a homeless facility or to bar a homeless family or individual from further participation in a homeless facility shall be commenced by filing a notice of cause, a copy of which is attached as Exhibit A, entitled "Notice of Cause", dated August 27, 1999, and located at the end of this chapter. The notice of cause shall be served on a participant or person.

(b) The notice of cause shall be in writing.

(c) The notice of cause shall contain, but not be limited to, the following:

- (1) A clear statement of the reason for eviction or for being barred from further participation;
- (2) The specific date and time at which assistance will cease and the participant will be required to vacate the premises;
- (3) The right of the participant to review the decision and request a hearing;
- (4) Instructions on how the participant may evoke a proceeding;
- (5) The right of the participant to review the participant's records; and
- (6) The right of the participant to be represented by an attorney or have counsel at a hearing. [Eff **OCT 25 1999**] (Auth: HRS §201G-452(b)) (Imp: HRS §201G-452)

§15-192-12 Request for hearing. (a) The request for hearing by the participant shall be in writing and filed with the facility operator or hearings officer within ten days after service of the notice of cause.

(b) The facility operator may set response time limits that are not less than three days and not more than ten days to ensure timely proceedings.

[Eff **OCT 25 1999**] (Auth: HRS §201G-452(b)) (Imp: HRS § 201G-452)

§15-192-13 Failure to respond. If a participant or person who has been served a notice of cause fails to respond and request a hearing with the facility operator or hearings officer, then the facility operator may enter a default judgment, a copy of which is attached as Exhibit B, located at the end of the chapter, entitled "Default", dated August 27, 1999. [Eff **OCT 25 1999**] (Auth: HRS §201G-452(b)) (Imp: HRS §201G-452)

§15-192-14 Emergency procedure. The facility operator may require participants who have been served a notice of cause, to remain off premises while proceedings are in action:

- (1) If the party involved and their guests pose a threat to the health, safety, and physical well-being of any participant or staff of the homeless facility or to the general public; or
 - (2) If the party involved violates the facility operator's house rules and regulations that require immediate eviction.
- [Eff **OCT 25 1999**] (Auth: HRS §201G-452(b)) (Imp: HRS §201G-452)

SUBCHAPTER 3

HEARINGS PROCEDURE

§15-192-21 Notice of hearing. Upon receipt of the request for hearing within the time limit set by the facility operator, the facility operator or hearings officer shall schedule a hearing and shall issue a notice of hearing to the participant or person requesting the hearing that contains, but is not limited to, the time, place, and procedures governing the hearing, a copy of which is attached as Exhibit C, located at the end of the chapter, entitled "Notice of Hearing", dated August 27, 1999. [Eff **OCT 25 1999**] (Auth: HRS §201G-452(b)) (Imp: HRS §201G-452)

§15-192-22 Hearing. (a) The hearing shall be conducted in an informal manner.

(b) Oral and documentary evidence may be received without regard to admissibility under the rules of evidence.

(c) The participant or person who has received a notice of cause shall be afforded a full and fair hearing that provides the basic safeguards of due process which shall include but not be limited to:

- (1) The opportunity to examine all documents, records and rules that are relevant to the notice of cause;
- (2) The right to be represented by counsel at participant's own expense;
- (3) The right to present evidence and to cross examine all witnesses;
- (4) The right to a decision based solely upon the facts presented at the hearing;
- (5) The right to be heard before a person other than the person, or subordinate of that person, who made or approved the decision; and
- (6) The right to receive written notice of the final decision within ten days of the date of hearing.

(d) The facility operator shall appoint either a hearings officer or a hearings panel that shall consist of not less than three persons and shall be selected according to the criteria in section 15-192-5.

[Eff **OCT 25 1999**] (Auth: HRS §§92-6, 92-16) (Imp: HRS §§201G-53, 201G-452)

§15-192-23 Conduct at hearing. The hearings officer may remove any person who disrupts a hearing or continue the hearing. If the party who has received a notice of cause and is removed for disruptive conduct, the hearing may continue and a determination may be made based upon the available evidence presented.

[Eff **OCT 25 1999**] (Auth: HRS §201G-452(b)) (Imp: HRS §201G-452)

§15-192-24 Default. (a) A person who has received a notice of cause fails to appear at a hearing after being duly notified may be found in default; a copy of which is attached as Exhibit B, at the end of

the chapter, entitled "Default", dated August 27, 1999.

(b) For good cause shown, the facility operator or hearings officer may set aside an entry of default. [Eff **OCT 25 1999**] (Auth: HRS §201G-452(b)) (Imp: HRS §201G-452)

\$15-192-25 Decision of hearings officer. (a) If it is proved to the satisfaction of the hearings officer that the facility operator is entitled to evict from a dwelling unit or to bar from further participation in a homeless facility the participant who received a notice of cause, then the hearings officer shall prepare a written decision together with the reasons therefor. A copy of the decision shall be sent to the participant who received a notice of cause, a copy of which is attached as Exhibit D, at the end of the chapter, entitled "Notice of Decision", dated August 27, 1999.

(b) The hearings officer may require that the facility operator set a maximum length of time in which the participant may be barred from participation in the homeless facility according to their written policies.

(c) The hearings officer may change the eviction date or bar to participation date given the outcome of the hearing. [Eff **OCT 25 1999**] (Auth: HRS §201G-452(b)) (Imp: HRS §201G-452)

\$15-192-26 Appeals. An appeal of the decision of the hearings officer may be taken to the corporation as provided in chapter 15-191. [Eff **OCT 25 1999**] (Auth: HRS §201G-452(b)) (Imp: HRS §201G-452)

\$15-192-27 Waiver of procedure. Upon agreement of the parties, any procedure in a hearing may be modified or waived and an informal disposition may be made of any case by agreed settlement or consent order. [Eff **OCT 25 1999**] (Auth: HRS §201G-452(b)) (Imp: HRS §201G-452)

\$15-192-28 Records. (a) The facility operator shall maintain written summaries of all hearings. Neither a full transcript nor recording of the hearing shall be required.

(b) All records of a hearing shall be confidential and released only at the direction of the hearings officer or by judicial order.

[Eff **OCT 25 1999**] (Auth: HRS §201G-452(b)) (Imp: HRS §201G-452)

SUBCHAPTER 4

REMEDIES

§15-192-31 Writ of possession. (a) If the hearings officer finds in the written decision that the facility operator is entitled to evict a participant and to take possession of a dwelling unit in a homeless facility, then the hearings officer, with concurrence of the corporation, may issue a writ of possession a copy of which is attached as Exhibit E, at the end of the chapter, entitled "Writ of Possession", dated August 27, 1999.

(b) The facility operator, together with the corporation, may issue a writ of possession subsequent to issuance of a notice of cause and prior to the completion of any hearing proceeding, if the party involved poses a threat to the health and safety, and physical well-being of any participant or staff of the homeless facility or to the general public.

(c) The enforcement of a writ of possession shall be effected by a law enforcement officer of the State or any county, whose duty shall be to enforce the writ.

(d) The person enforcing the writ shall remove the participant from the premises, and put the facility operator or certain occupant(s) of the dwelling unit, as specified in the writ, in full possession thereof.

[Eff **OCT 25 1999**] (Auth: HRS §201G-452(b)) (Imp: HRS §§201G-452, 201G-458)

§15-192-32 Disposition of evicted person's possessions. (a) When a participant who is being evicted leaves personal property within the premises, the personal property of the participant against whom the writ is entered, and those of any persons using the premises incident to the participant's holding, may be removed by the facility operator.

(b) If the facility operator, in good faith,

determines the personal property to be of value, the facility operator may sell such personal property, in a commercially reasonable manner, or donate the personal property to a charitable organization. The proceeds of the sale of personal property shall, after deduction of costs of removing the personal property, of storage and sale of the personal property, be held in trust for the participant being evicted for thirty days, after which time the proceeds shall be forfeited to the facility operator.

(c) If the facility operator determines the personal property to be of no value, the facility operator may dispose of such personal property at their discretion without liability to the corporation or facility operator. [Eff **OCT 25 1999**] (Auth: HRS §201G-452(b)) (Imp: HRS §201G-458)

SUBCHAPTER 5

MISCELLANEOUS PROVISIONS

§15-192-41 Severability. If any part, section, sentence, clause, or phrase of this chapter, or its application to any person or transaction or other circumstances is for any reason held to be unconstitutional or invalid, the remaining parts, sections, sentences, clauses, and phrases of this chapter, or the applications of this chapter to other persons or transactions or circumstances shall not be affected. [Eff **OCT 25 1999**] (Auth: HRS §201G-452(b)) (Imp: HRS §201G-452)

"Notice of Cause"

In the Matter
of
(name)

No.

(facility operator) hereby gives notice to (name), hereinafter referred to as "you", that the facility operator will take the following actions:

() Evict you from (address). The (facility operator) is requesting a writ of possession be issued to remove you from the premises if you do not vacate the premises.

() Bar you from further participation at (homeless facility) or (period of time). The effective date of this action will be (date) at (time).

The (facility operator) is taking this action for the following reasons(s):

IF YOU DO NOT AGREE WITH THIS ACTION, YOU HAVE THE RIGHT TO REQUEST A HEARING BEFORE A HEARINGS OFFICER, TO REVIEW RECORDS THAT WILL BE PRESENTED AT THE HEARING THAT ARE RELEVANT TO THIS NOTICE OF CAUSE, AND TO BE REPRESENTED BY AN ATTORNEY OR HAVE COUNSEL AT YOUR OWN EXPENSE. THE WRITTEN REQUEST FOR A HEARING MUST BE FILED WITH THE FACILITY OPERATOR OR HEARINGS OFFICER WITHIN TEN DAYS AFTER YOU RECEIVE THIS NOTICE AND

SHOULD BE FILED AT THE FOLLOWING ADDRESS:

Facility Operator

(address)

DATED: (city, state), (date).

(facility operator)

By
Its

SERVICE OF NOTICE OF CAUSE

() PERSONAL SERVICE

NAME

TIME

DATE

PLACE

() REGISTERED/CERTIFIED MAIL

RECEIPT DATE

() POSTING OF NOTICE

DATE

EXHIBIT C

"Notice of Hearing"

STATE OF HAWAII
(facility operator)

In the Matter)	
of)	No. _____
)	
(name))	
_____)	
_____)	

NOTICE OF HEARING

TO: _____ (name)
_____ (address)

You are hereby notified that a hearing which you requested has been scheduled for:

DATE: _____
TIME: _____
PLACE: _____

YOU HAVE THE RIGHT TO BE REPRESENTED BY AN ATTORNEY OR HAVE COUNSEL AT YOUR EXPENSE OR TO REPRESENT YOURSELF. AT THE HEARING YOU WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND CROSS EXAMINE ALL WITNESSES.

DATE: _____ (city, state) _____, _____ (date) _____.

Facility Operator or Hearings Officer

EXHIBIT D

"Notice of Decision"

STATE OF HAWAII
(facility operator)

In the Matter)	
of)	No. _____
)	
_____ (name) _____)	
_____)	

DECISION

This matter having come before the hearings officer on _____ (hearing date) _____, all parties being present in person or by counsel, and proof having been shown to the satisfaction of the hearings officer that:

- () The _____ (facility operator) _____ is/is not entitled to possession of the dwelling unit at _____ (address) _____.
- () _____ (name) _____ shall vacate the premises by _____ (date and time) _____ and a writ of possession shall be served if you do not vacate the premises.
- () _____ (name) _____ is/is not barred from further participation at _____ (homeless facility) _____ for _____ (period of time) _____.

The hearings officer is making this decision for the following reason(s): _____

IF YOU DO NOT AGREE WITH THIS DECISION, YOU HAVE THE RIGHT TO APPEAL THIS DECISION TO THE HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII IN WRITING WITHIN TEN DAYS OF THIS DECISION AS PROVIDED IN CHAPTER 15-191, HAWAII ADMINISTRATIVE RULES. THE WRITTEN REQUEST SHALL SPECIFY THE GROUNDS FOR THE REQUEST FOR HEARING AND THE ACTION OR RELIEF SOUGHT. HEARINGS BEFORE THE CORPORATION MAY BE CONDUCTED AS PUBLIC HEARINGS. THIS APPEAL PROCESS DOES NOT ALTER THE ACTION IN THIS DECISION, INCLUDING VACATING THE PREMISES OF THIS HOMELESS FACILITY.

DATE: _____ (city, state) _____, _____ (date) _____.

Hearings Officer

EXHIBIT E
"Writ of Possession"

STATE OF HAWAII
(facility operator)

In the Matter)
 of)
)
 (name))

No. _____

WRIT OF POSSESSION

TO: Any police officer or law enforcement officer
of the state or any county.

_____ (facility operator) and the Housing
and Community Development Corporation of Hawaii made a
decision against _____ (name) for
possession of the dwelling unit at _____ (address)
_____.

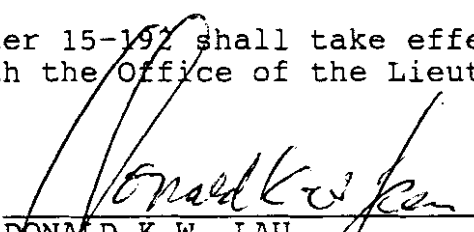
NOW, YOU ARE COMMANDED TO:

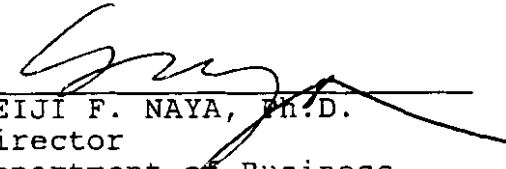
- () REMOVE _____ (name) and all
persons holding under or through him/her
from the unit, including his/her personal
belongings and properties needed or
desired, and put _____ (facility operator)
in full possession thereof, pursuant to
chapter 201G-458, Hawaii Revised Statutes.
- () REMOVE _____ (name) from

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,
AND TOURISM


Chapter 15-192, Hawaii Administrative Rules, on the Summary Page dated August 27, 1999, was adopted on August 27, 1999, following public hearings held on Maui on July 15, 1999, Hilo on July 16, 1999, Oahu on July 19, 1999, and Kauai on July 20, 1999, after public notice was given in the Midweek newspaper on June 7, 1999.

The adoption of chapter 15-192 shall take effect ten days after filing with the Office of the Lieutenant Governor.



DONALD K.W. LAU
Executive Director
Housing and Community
Development Corporation of
Hawaii


SEIJI F. NAYA, Ph.D.
Director
Department of Business,
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APPROVED AS TO FORM:


Deputy Attorney General

APPROVED:


BENJAMIN J. CAYETANO
Governor
State of Hawaii

Dated:

10-14-99
OCT 15 1999

Filed

LIEUTENANT GOVERNOR'S
OFFICE

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